

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EUGENE BRIAN GARVIE,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 2:24-cv-00531-LK

ORDER DENYING MOTIONS TO  
APPOINT COUNSEL AND FOR  
RELIEF FROM JUDGMENT

This matter comes before the Court on Petitioner Eugene Garvie’s motion to appoint counsel and five motions to void the judgment in this case under Federal Rule of Civil Procedure 60(b)(4). Dkt. Nos. 19, 29, 32, 35–36, 38. For the reasons set forth below, the Court denies the motions.

**I. BACKGROUND**

On July 26, 2024, the Court adopted the Report and Recommendation (“R&R”) of United States Magistrate Judge Michelle L. Peterson and dismissed Mr. Garvie’s petition for writ of habeas corpus without prejudice for failure to prosecute and failure to comply with the Court’s order. Dkt. No. 17 at 3–4. Specifically, Mr. Garvie did not pay the filing fee, file an amended

1 application to proceed *in forma pauperis*, or show cause for these deficiencies as required by the  
 2 Court's Order to Show Cause. *Id.* Mr. Garvie filed an appeal, Dkt. No. 18, a motion for  
 3 appointment of counsel, Dkt. No. 19, and then five nearly identical motions for relief from the  
 4 judgment, Dkt. Nos. 29, 32, 35–36, 38.

## 5 II. DISCUSSION


6 Mr. Garvie filed his motions to appoint counsel and for relief from the judgment after he  
 7 filed his notice of appeal. Dkt. No. 18 (Notice of Appeal); Dkt. No. 19 (Proposed Motion to  
 8 Appoint Counsel); Dkt. Nos. 29, 32, 35–36, 38 (motions for relief from the judgment). Because he  
 9 filed his motions after his appeal, this Court lacks jurisdiction to entertain his motions. *Williams v.*  
 10 *Woodford*, 384 F.3d 567, 586 (9th Cir. 2002); *see also Estrada v. Clines*, 559 F. App'x 652, 652-  
 11 53 (9th Cir. 2014). “To seek Rule 60(b) relief during the pendency of an appeal, the proper  
 12 procedure is to ask the district court whether it wishes to entertain the motion, or to grant it, and  
 13 then move [the Ninth Circuit], if appropriate, for remand of the case.” *Williams*, 384 F.3d at 586  
 14 (quotation marks omitted). Mr. Garvie did not follow that procedure, the Court does not have  
 15 jurisdiction over his motions, and any order the Court would issue on them would be void for lack  
 16 of jurisdiction. *Id.* The Court may summarily strike future procedurally improper filings.

17 Mr. Garvie also seeks a certificate of appealability, Dkt. No. 29 at 2, but the Court has  
 18 already denied that request, Dkt. No. 28.

## 19 III. CONCLUSION

20 Accordingly, the Court DENIES Mr. Garvie's motion to appoint counsel and motions for  
 21 relief from the judgment for lack of jurisdiction. Dkt. Nos. 19, 29, 32, 35–36, 38.

22 Dated this 30th day of October, 2024.

23   
 24 Lauren King  
 United States District Judge